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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 RAYMOND A. FORSMAN,

9 Plaintiff,

10 v.

11 PORT OF SEATTLE,

12 Defendant.

Case No. C19-2050RSL

ORDER OF DISMISSAL

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14 This matter comes before the Court on the Report and Recommendation of the Honorable
15 Michelle L. Peterson, United States Magistrate Judge. Plaintiff did not file objections or a
16 response to the recommendation of dismissal. Having reviewed the Report and Recommendation
17 and the remainder of the record, the Court finds and ORDERS:

18 Plaintiff alleges that the Port of Seattle, through its attorney and managers, deprived him
19 of the opportunity to obtain equipment and engage in fishing activities that are permitted under
20 state law, in violation of 25 C.F.R. § 249.7(a). The issue is whether there is a private right of
21 action to enforce the provisions of part 249. “Where a federal statute does not explicitly create a
22 private right of action, a plaintiff can maintain a suit only if Congress intended to provide the
23 plaintiff with an implied private right of action.” *In re Digimarc Corp. Derivative Litig.*, 549

1 F.3d 1223, 1230 (9th Cir. 2008) (quoting *First Pac. Bancorp, Inc. v. Helfer*, 224 F.3d 1117, 1121
2 (9th Cir. 2000)) (alteration and internal quotation marks omitted). Accordingly, the Court’s task
3 is to interpret the statute Congress passed to determine whether it, either explicitly or by
4 implication, evinces an intent to create not only a private right, but also a private remedy. *Logan*
5 *v. U.S. Bank Nat. Ass’n*, 722 F.3d 1163, 1169 (9th Cir. 2013). In the absence of such intent,
6 courts may not create a private cause of action “no matter how desirable . . . as a policy matter,
7 or how compatible with the statute.” *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001).

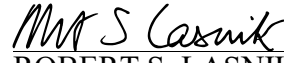
8 There is no indication that Congress intended to create a private cause of action in the
9 statutes underlying 25 U.S.C. § 249.7. To the contrary, those statutes simply authorize the
10 Commissioner of Indian Affairs to manage Indian relations and the Secretary of the Interior to
11 issue regulations. *See* 25 U.S.C. § 2; 5 U.S.C. § 301; 43 U.S.C. § 1451. Nor is there any language
12 in part 249 suggesting that the regulatory agency intended to create a private cause of action or
13 believed it had the power to do so.¹ The only actions authorized by the part dealing with off-
14 reservation treaty fishing (part 249) involve tribal actions to punish violations by its members.
15 *See* 25 U.S.C. § 249.6. Section 249.7 is nothing more than a savings provision, preserving rights
16 granted elsewhere and making clear what 25 C.F.R. § 249.1, *et seq.*, does not do. Plaintiff is
17 attempting to pursue a civil action based on the regulatory statement that part 249 does not
18 “[p]rohibit or restrict any persons from engaging in any fishing activity in any manner which is
19 permitted under state law.” The regulation does not create new rights, methods, or means of
20 fishing, however. Rather, it simply leaves untouched the rights created by the states. If, as
21 plaintiff alleges here, Port agents and employees interfered with a state-given right to possess
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¹ “Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not.” *Alexander*, 532 U.S. at 291.

1 fishing equipment or to engage in fishing activity, he may have a claim under state law, but he
2 has no remedy directly under 25 U.S.C. § 249.7.

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4 For all of the foregoing reasons, this matter is DISMISSED with prejudice. In light of the
5 many opportunities plaintiff has already had to state a viable claim, the Court adopts the
6 recommendation that leave to amend be DENIED.

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8 Dated this 24th day of May, 2021.

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10 ROBERT S. LASNIK
11 United States District Judge
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